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COMMITTEE ON NEBRASKA RETIREMENT SYSTEMS

January 31, 2006

LB 1019, 1140

The Committee on Nebraska Retirement Systems met at 12:15 p.m. on Tuesday, January 31, 2006, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 1019, and LB 1140. Senators present: Elaine Stuhr, Chairperson; John Synowiecki, Vice Chairperson; Patrick Bourne; Philip Erdman; and Marian Price. Senators absent: Don Pederson.

SENATOR STUHR: (Recorder malfunction)...and to my far right is Mr. Donn Jones who is our committee actuary; and Senator Marian Price from Lincoln; Senator Phil Erdman from Bayard; and to my immediate right, Jason Hayes, who is our legal counsel for the committee; and to my left, Senator John Synowiecki I think will be coming shortly, and he serves as Vice Chair of the committee; Senator Patrick Bourne from Omaha; Senator Pederson is unable to be with us today; and our committee clerk Kathy Baugh. Also our page, Jake Wasen...; I just can't say it; what's your last name?

JACOB WAWRZYNKIEWICZ: Wawrzyrkiewicz.

SENATOR STUHR: Wawrzyrkiewicz. And he is from Papillion. So we welcome him and thank him. Just a few notes: If you have cell phones, please turn those off, or pagers; they are disrupting. Those wishing to testify should come towards the front of the room. And if you are testifying, please print your name on the sign-in sheet, and also spell your name, both your first and your last name. And if you have handouts, you may give them to the page. And I believe that is it. Today for our hearing we will hear LB 1019 and LB 1140. And Senator Synowiecki has now joined us. So we will open with LB 1019. Okay, welcome.

LB 1019

JASON HAYES: (Exhibits 1 and 2) Good afternoon, Senator Stuhr and members of the Nebraska Retirement Systems Committee. My name is Jason Hayes, spelled J-a-s-o-n H-a-y-e-s, counsel for the committee, and I'm here to introduce LB 1019 on behalf of the committee. This bill proposes a number of technical changes to the operation of both the Nebraska Public Employees Retirement Board, the

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Nebraska Investment Council, various retirement systems administered by PERB, and also the Class V Retirement System. I will talk briefly about each proposal. First, LB 1019 would change the county, state, and patrol plans' annuity end dates so that the last annuity payment received would be at the end of the calendar month in which a member dies or in accordance with the payment option chosen by such member. This proposal was submitted by NPERS, and I anticipate that they'll be speaking to this. Next, the bill clarifies the retirement vesting provisions for the state and county plans. Four years ago, with the adoption of LB 687 in 2002, the vesting period was changed from five years of participation to three years' participation in the retirement plans. This meant that employees were able to vest after four years of employment because employees first had to have 12 months of continuous employment before an employee could participate. So the employee would be hired, wait a year, and after the three years of participation would vest with regard to the amount of their matching employer account. On July 10, 2002, Attorney General Opinion 2017 was issued, and the AG indicated that the language in LB 687 allowed for a three-year vesting period after employment, so not on participation and not the four years as was originally intended in the bill. Since that opinion was issued, NPERS has followed the three-years' vesting period as instructed in the opinion. What this clarification intends to do is codify the findings of the AG Opinion into statute, which allows for a three-year vesting period comprised of a one-year waiting period after hiring, and then two years of participation, for a total of three years after an employee begins employment. Now, when this bill was introduced, it was unknown that LB 366 would be on Select File and would remove the one-year waiting period. And so if LB 366 is adopted, then a later amendment will need to be made to the section in order to harmonize the provisions and keep in place a three-year vesting period from the date of hiring. Next, LB 1019 would change the date on which a term of appointment would end for the Nebraska Investment Council members. Currently, an appointment member...or an appointee...appointed member's term ends on September 18 of each year after serving a five-year term. LB 1019 proposes a December 31 ending date to more coincide with a member's confirmation by the Legislature. The bill also would clarify the employer

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contribution amount for the School Employees Retirement Act. LB 1019 changes the employer contribution rate from a 101 percent match of the employee's contribution to an actual percentage rate contributed by the employer. So instead of saying there is a 101 percent match to an employee contribution rate of 7.25, the employer rate would be 7.32 percent. Last year, when rates were temporarily changed, there was some confusion as to what the employer rate was, and so this would help to make it clear in statute as to what the actual percentage rate is. Next, the bill requires the Class V Retirement System's annual report be submitted to the Retirement Committee by March 15 of each year to coincide with the release of both NPERS and the Investment Council's reports. The bill also would change a provision relating to the rollover of distributions for the Class V Retirement System. This change is necessary to comply with new IRS regulations and was submitted by the Omaha system. Next, LB 1019 would clarify the current fiduciary duty of PERB members. The new language would be as follows: PERB members shall not have a fiduciary duty in their official capacity to seek the enhancement of plan benefits through the legislative process, if such benefits are not already contained within plan documents for each retirement plan administered by PERB. The reason for this provision is twofold. First, it prevents the board from advocating benefit enhancements to any plan administered by the board and places the responsibility on the member groups to seek such enhancements. Second, as trustee for the retirement plans, it keeps the focus on the board on administering the plans and maintaining the benefits of the plans already adopted in statute. This provision would not prohibit a PERB member in their unofficial capacity from seeking plan...or from seeking benefit enhancements on their own. Basically, the provision helps to maintain the neutrality of PERB when it comes to enhancing member benefits. Finally, LB 1019 would clarify that the internal auditor and the attorney hired by PERB shall be classified positions covered by the State Personnel System. This restates the provision previously adopted in LB 503 last year, but DAS had requested a technical modification to the provision. Also, there is one amendment to the bill, AM2029, that would make a technical change to the definition of compensation for the School Employees plan. The change would be made by defining category of school employee to

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include either all employees who are administrators or certificated teachers, or all employees who are not administrators or certificated teachers, or both. Currently, the category of school employee, in this definition section, means either all certificated employees, or all noncertificated employees, or both. And because some school administrators are not certificated, the change is suggested because the original intent of the provision adopted last year was to include administrators and certificated teachers into one group under this subsection. Are there any questions? I know that was a lot of provisions in there.

SENATOR STUHR: All right. Are there questions by the committee? Senator Bourne.

SENATOR BOURNE: Thank you. Jason, thanks for the introduction. I have just a couple of questions. Several years ago, I think Senator Bruning was the chair of the committee, we changed the vesting period for the state plans to three years. So now is this just clarification that says the 12 months that they're not in the plan, followed by two years, equals three? Or is it actually reducing the vesting?

JASON HAYES: That's correct. I mean, there's no change to the vesting period. It's just...

SENATOR BOURNE: Okay, so it's just a clarification.

JASON HAYES: Correct. If you read the statute right now, it does read to be three years' plan participation. The AG's Opinion that was released in 2002 interpreted that to mean three years of employment.

SENATOR BOURNE: Did we change the law prior to the AG's Opinion?

JASON HAYES: That's correct.

SENATOR BOURNE: Was that 2001?

JASON HAYES: Changed it from five years' participation to three years.

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SENATOR BOURNE: Okay, so it's a clarification.

JASON HAYES: Correct.

SENATOR BOURNE: And then help me out in this bullet point that says, clarifies the employer contribution; changes the employer contribution rate from 101 percent match of the employee's contribution to an actual percentage rate of that contributed by the employer. What are we doing there?

JASON HAYES: We're not changing the rate at all. Basically, it's just a...you know, to...I guess I can't tell you how many questions I had last year when the rates were temporarily increased in terms of senators coming up and saying, what is the actual employer contribution rate? So, oftentimes, you'd have to calculate it and provide documents to show everybody what the actual rate was. And so by putting it into statute, it really just allows somebody to look at it without having to do a calculation as to what the rate would be.

SENATOR BOURNE: And I mean, we can talk about this off line.

JASON HAYES: Yeah.

SENATOR BOURNE: But if the question is regarding the employer's contribution rate, and yet we're setting out in statute that the employee's rate is a percent of the employer's, I don't understand how it solved the problem?

JASON HAYES: Well, instead of saying that the employer rate is 101 percent,...

SENATOR BOURNE: The employee's rate?

JASON HAYES: Or, I'm sorry, yeah, the employee rate, I mean prior to the change and what it will go back to is 7.25 percent,...

SENATOR BOURNE: Okay.

JASON HAYES: ...and in statute right now it says there's an

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employer contribution rate of 101 percent match. And so that calculates out to 7.32 percent. And so what this would do is just state it in statute as 7.32,...

SENATOR BOURNE: Okay.

JASON HAYES: ...instead of as 101 match.

SENATOR BOURNE: I'm still not all clear. But we...

JASON HAYES: Okay.

SENATOR BOURNE: ...we won't take the committee's time; we'll...I'll follow up with you. Thank you.

JASON HAYES: Sure.

SENATOR STUHR: Okay. Are there any other questions? So, Jason, actually most of these are technical amendments...

JASON HAYES: That's correct, yeah.

SENATOR STUHR: ...and have been brought to us by some...

JASON HAYES: Most...I listed the one from NPERS, and then the other one from the Omaha Class V Retirement System.

SENATOR STUHR: Yes. Okay. All right.

SENATOR BOURNE: If I could ask one more thing.

SENATOR STUHR: Yes, Senator Bourne.

SENATOR BOURNE: Jason, the language in the amendment, did that come from NPERS as well?

JASON HAYES: No, that was a discussion that was had over the summer in connection with, I want to say LR 176 or LR 177, LR 177 with regard to...oh, I'm sorry, I'm...that's not the number...but a discussion with regard to looking at compensation definition...or the compensation of school with regard to the definition of it. And what this...purely in the discussion it came up that there were some administrators that were not certificated, and to try to get

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back to the original intent of last year with LB 503, which stated that...I mean, the intent was just to try to get the administrators and the certificated teachers into one group.

SENATOR BOURNE: What are we trying to do with the language on page 9 of the amendment in lines 16 through 23? And it talks about employer paid amounts used by an employee towards the cost of health insurance premium. Am I on the right amendment? AM2029, page 9, lines 16 through 23.

JASON HAYES: Okay, that needs to be stricken out. And I apologize for that.

SENATOR BOURNE: Okay.

JASON HAYES: That was part of LB 1142, and my instructions to Bill Drafters was just to take the sections with regard to the employer...I mean, I'm sorry, with regard to the administrators and certificated teachers. So that would need to be stricken out.

SENATOR BOURNE: Okay, thank you.

SENATOR STUHR: Okay. Are there any other questions? Okay, thank you, Jason.

JASON HAYES: Sure.

SENATOR STUHR: Those wishing to testify as proponents of the bill, come forward. Welcome.

JOE SCHAEFER: Good afternoon, Senator Stuhr, members of the committee. My name is Joe Schaefer, J-o-e S-c-h-a-e-f-e-r, and I'm legal counsel and legislative liaison for the Public Employees Retirement System. Very good to see you all again. I'm testifying, generally, in support of LB 1019. Several of the provisions contained there are technical changes that we requested. Others of the provisions come from other entities, such as the Class V system, and the Investment Council, but we also support their endeavors. I have been instructed by the PERB, however, that my testimony is neutral on Section 10 of the bill. I'll briefly summarize the technical provisions with the knowledge that Jason has just gone through these. The annuity end date

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issue in two of the plans we administer, the school employees and the judges, those definitions currently contain provisions which allow an annuity payment to be paid for the entire month in which the annuitant dies, that is without reducing the amount by a proportion of the days remaining in the month at the date of death. Monthly payments essentially terminate on the last day of the month which contains the annuitant's date of death. And we ask that a similar provision be adopted for members of the State Patrol, county, and state plans. The county plan is addressed in Section 1, State Patrol in Section 7, and the state plan in Section 8. We believe it's better to treat this area or this issue consistently in all the plans, and also it makes it slightly easier to administer in the unfortunate situations that sometimes arise. Sections 2 and 9 deal with the participation issue that Jason has addressed. Currently, it takes three years of employment with the state to become vested, and that would not change. The Investment Council terms are in Section 3; Section 4 deals with the employer contribution rates. I would mention that when the changeover in the school rates happened this past year, there was a very brief period where there was a question about whether you round to four places or two places. And it took us a little bit, a few minutes, to correct it so we were all on the same page. But we didn't really have any long-lasting problem with that. Section 5 deals with the Class V system; Section 6 also does. With regard to Section 10, this bill, it was subject to the following motion at the January 23 PERB meeting: that testimony be delivered in a neutral capacity on this section. There was a great deal of discussion and the board questions the need for the addition of the language. I believe there's been testimony, either has or will be submitted by one of the board members on his own behalf. And then I think Section 11 is the personnel issue that Jason addressed. I have not seen the amendment. I would reserve comments on the compensation part of that until we had a chance to discuss that. But I don't think we'll have problems with working with you on that. With that, I'd be happy to try to address any questions about the bill that you might have.

SENATOR STUHR: Okay. Thank you, Joe. Are there questions for Mr. Schaefer? Thank you very much. Are there other

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proponents? Welcome.

CAROL KONTOR: Thank you, Senator Stuhr and members of the Retirement Committee. My name is Carol Kontor, C-a-r-o-l K-o-n-t-o-r, and I'm State Investment Officer. And I just want to speak briefly on behalf of the Nebraska Investment Council regarding the additional language in Section 3, on pages 12 and 13. And basically what that does is change the council terms to begin on January 1. Historically, council terms have begun on September 18, because back in 1969, LB 1345 was approved on September 18 of 1969. So kind of...that's when council member terms begin. But, as you know, council members are appointed by the Governor and approved by the Legislature, so that the council members are not fully confirmed until approved by you, and therefore cannot vote. This can cause us a timing glitch, as it did just this last year where John Maginn was appointed September 18 to fill the expired term of Ken Green, and he believes his term expires September 18, but yet, because John was not confirmed by the Legislature until last week, he has not been able to vote at our meetings. So he attends but has not been able to vote. So by changing to January 1, I would foresee that almost always you all would have an opportunity to meet with the appointed member and hopefully approve, and that would eliminate this timing glitch. So, with that, I'd be happy to take any questions.

SENATOR STUHR: Okay, thank you very much. Are there questions for Carol? Senator Bourne.

SENATOR BOURNE: Thank you. Ms. Kontor, thank you. I'm not going to go into how your leaving is going to put the state at a huge disadvantage now, but it is.

CAROL KONTOR: (Laugh) Thank you.

SENATOR BOURNE: I'm really regretful that, if regretful is a word, I regret that you're leaving, but I understand. Hey, I want to ask you about this language, the September 1. You said that that last individual, Mr. Maginn, he...17 days later, so he was appointed by the Governor on the 17th of September. Is that...I guess what I'm asking, is that a common time frame? You know, in a short session here, we'll be out by the middle of April. If the appointment can't

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occur until January 1, does it ever happen where there's a time where there's a four-month delay? You see what...

CAROL KONTOR: Yes.

SENATOR BOURNE: My sense is, the reason it's prior to the first of the year is to give time for a person to be appointed; and if you coincide around the time the Legislature convenes, you see where I'm coming from?

CAROL KONTOR: Well, we don't consider the person appointed until the Governor...

SENATOR BOURNE: A spot filled, however you want to say it.

CAROL KONTOR: The Governor appoints, and that's what starts the September 18 clock.

SENATOR BOURNE: I guess what I'm asking is, is that lag, is it usually only a couple weeks between the time a term ends and a new person is recommended by the Governor? Can you ever see a situation, if we change it to January 1, where the new person wouldn't be appointed until after the Legislature convened, so he or she would be in the spot, recommended by the Governor. Is there ever a situation where we would miss it, meaning he didn't recommend somebody for several months? You see what I'm asking?

CAROL KONTOR: I am; I think so, and I'm just thinking through that, because right now what happens is we're always getting the appointment from the Governor prior to the expiration of the term.

SENATOR BOURNE: Okay, that's how it generally works?

CAROL KONTOR: Yes, and in fact, see John...we got the letter from the Governor regarding John Maginn in August.

SENATOR BOURNE: Okay. The reason I ask is that oftentimes as legislators we will get pages of spots that are coming open. And I've noticed on some of those appointed positions that there...that's gone vacant for months.

CAROL KONTOR: Hmm.

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SENATOR BOURNE: Now maybe not in a position that's as important as yours and your board's, but you see what I'm saying?

CAROL KONTOR: Yes.

SENATOR BOURNE: I'm concerned that we might miss a lack of a recommendation at such time that it be a whole year before then the Legislature could confirm him or her.

CAROL KONTOR: Now I've been affiliated with the council for eight years, and I've never seen it where the appointment from the Governor did not come prior to September 18.

SENATOR BOURNE: Okay.

CAROL KONTOR: And maybe that's because we just have five voting members.

SENATOR BOURNE: Okay.

CAROL KONTOR: How else would you...would there be a better way that you can see this working?

SENATOR BOURNE: I don't know, that's why I'm asking you the question.

CAROL KONTOR: Yeah, I think I...

SENATOR BOURNE: You're smarter than I am.

CAROL KONTOR: (Laugh) No, I doubt that, but I think this is probably the best thing we can think of at this time and it cleans up what has historically been a problem.

SENATOR BOURNE: Understood.

CAROL KONTOR: So, I guess, if we would encounter problem, then maybe we'll have to go back to the drawing board.

SENATOR BOURNE: Carol, do...when does usually the Investment Council meet? Is it every month, or end of the month?

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CAROL KONTOR: Every other month.

SENATOR STUHR: Every other month.

CAROL KONTOR: We have gone in the last year or last two years to every other month. And we would...

SENATOR STUHR: Okay. And is that usually towards the end of the month or...

CAROL KONTOR: Yes, almost always, because then we can get our monthly data so that...now, but December we won't probably get until February, but almost always it's at the end of the month because we can get more performance information and manager information from the close of the preceding month.

SENATOR STUHR: Right.

CAROL KONTOR: So it's usually the third or fourth week of...actually it's...generally we're the fourth Tuesday of the...of every other month, bimonthly.

SENATOR STUHR: And so actually what you're thinking is the appointment would be made, it could be confirmed early in the session, and so by that first meeting...

CAROL KONTOR: Yes.

SENATOR STUHR: ...of that new year the person would be in place and would have been confirmed.

CAROL KONTOR: Yes.

SENATOR STUHR: So that's...

CAROL KONTOR: Um-hum, yes, that's exactly right.

SENATOR STUHR: ...what we're aiming at.

CAROL KONTOR: Now it's because, see the council is meeting February...next...a week from today, week from yesterday. And so, you know, that would...now John Maginn can vote.

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SENATOR STUHR: Yes.

CAROL KONTOR: But because, I guess, we know that the terms expire December 31 and they are staggered terms, then we send recommendations to the Governor well in advance of that to tee up the fact that this vacancy is going to happen, and then we've always gotten a response from the Governor.

SENATOR STUHR: Right. Senator Erdman.

SENATOR ERDMAN: Ms. Kontor, as I read the current language, it says that the term of any appointed member shall be extended until the date on which his or her successor's appointment is effective. So the scenario that you outlined where one member was being replaced because he was term-limited, is terminated, the new appointee was made, and then I believe your testimony was that the retiring member interpreted the law to say that they were no longer responsible or allowed to be able to vote until...because of the fact that their term had ended. As I would read the language in Section 3, it would seem that in that scenario that the retiring member should have continued to serve until the appointee was confirmed by the Legislature, therefore making the appointment effective from what you have testified. Is that how you would understand the law?

CAROL KONTOR: That's the way we understand. Now, after researching this in the last couple of months, that's what we understand, as well. And so that's why we need to...we recommend that we eliminate the fact that the council thinks that their terms end...begin and end in September, because we should have had Ken Green continuing throughout. But historically that just hasn't been the practice.

SENATOR ERDMAN: And in the scenario that Senator Bourne outlined, in the event that we would miss that term, if you will, of the Legislature being in session, the prior member would continue to serve until that new appointee was effective, the appointee was effective according to the current language. Is that not correct as well?

CAROL KONTOR: Yes, because I talked to Dale Comer in the AG's Office on this, and he believes, although he said it can be interpreted differently, it has been interpreted

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differently by different people, but that it is the issue when an expired term, a term expires, if a vacancy is created, if someone is asked to leave the council, moves out of the state, et cetera, then the Governor's appointment suffices to allow the person to vote. But it's when that...and that's Dale's interpretation of...there's a term for that. Do you remember that term, Jason?

JASON HAYES: (Inaudible).

CAROL KONTOR: The successional vote or something.

SENATOR ERDMAN: A successor, but I believe that's under a different section, because if you read the current Section 3, there's a provision that refers to the event of a member's term being expired. It does talk about the Governor removing, but it does say, the term of any appointed member shall be extended until the date on which his or her successor's appointment is effective. Then as you turn the page, on page 14, it refers to the process in which a vacancy is caused by death, resignation, or otherwise. Then the Governor shall appoint a qualified person to fill the vacancy for the unexpired term. So there may be a misinterpretation based on which section of that law you're referring to. But I want it to be clear, because I think what Senator Bourne is concerned about is having a vacancy where nobody can act. And my thought was that we would extend the term of that individual until they were confirmed, their replacement was confirmed. But it appears from my reading of the language that it's already there. and I think the confusion is which section of that existing law you're interpreting.

CAROL KONTOR: Where there's a vacancy or an expired term.

SENATOR ERDMAN: Sure.

CAROL KONTOR: Yes, and that...that's Dale Comer's interpretation of which (cough), as well. Thank you.

SENATOR ERDMAN: Okay.

SENATOR STUHR: Okay, thank you. Are there any other questions? Thank you very much for coming today.

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CAROL KONTOR: Thank you.

SENATOR STUHR: Others wishing to testify as a proponent?
Welcome.

MICHAEL SMITH: Good afternoon, Senator Stuhr and members of the committee. My name is Michael Smith, M-i-c-h-a-e-l S-m-i-t-h. I'm executive director of the Omaha School Employees Retirement System. I'll be limiting my testimony to Section 6 of this particular bill, which is something that was asked by the Omaha plan to be introduced. The internal...that's on page 20...is where the actual changes in Section 6 are actually implemented. The Internal Revenue Service has indicated that if you have provisions within your plan that require nonvested terminated members to take their money with them when they go, and that is the way it is with the Omaha plan, then that individual must make an affirmative decision to either receive a refund, thereby being penalized, or direct a rollover to a tax-deferred plan. And if they don't make that affirmative decision, then we must establish an arrangement with local bank to actually set up an IRA for them and roll the money into that IRA on their behalf. Heretofore, if somebody chose not to answer us, (laugh) they just bothered to...not bothered to respond to us, after about, oh, three, four months we will go ahead and refund the money to them and say, well, if you want cash, cash it is. Now IRS says we're not permitted to do that. We must set up an IRA for them at a local bank and just inform them of the fact that we've now rolled their money over to XYZ IRA at ABC Bank. And so because we have no latitude, IRS says we must do that. We're asking for the opportunity to have that put into our statutes so that we can proceed in that fashion. And that's the sum total of what Section 6 deals with. Certainly be glad to answer any questions related to this.

SENATOR STUHR: Are there any questions for Mr. Smith? If not, thank you. I do have a question because we have also are asking you to submit your actuary. Is that a workable date?

MICHAEL SMITH: In most years the answer is absolutely yes. That goes back to Section 5 in this particular bill,...

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SENATOR STUHR: Yes.

MICHAEL SMITH: ...which addresses a March 15 date. Because we are a single employer plan, our goal obviously is to have the most accurate information in the actuarial evaluation that is possible. In those years when the unions have not yet settled contract provisions with the school district, we delay producing the actuarial valuation until we actually know what that new, settled contract looks like. Okay?

SENATOR STUHR: All right.

MICHAEL SMITH: So that's why we tend to have variable dates as to when the valuation is produced, because we want to have the most up-to-date, accurate info. With this particular March 15 date, that will cover, oh, I would say probably 90 to 95 percent of the times that I can recall in terms of extended negotiations. In those instances where it doesn't, then what the actuary can do for us is merely use what the actuary assumes those salary increases are going to be for that small bargaining unit, whichever one it may be, and still produce the valuation on our behalf. And then obviously, in the years to come, we catch up whatever variance there might have been between the actuarial assumed increase and what the contract negotiations actually produced.

SENATOR STUHR: All right.

MICHAEL SMITH: So I see no great difficulty with that.

SENATOR STUHR: Okay.

MICHAEL SMITH: And it will provide the information that's needed.

SENATOR STUHR: Right.

MICHAEL SMITH: So, no difficulties.

SENATOR STUHR: Okay. All right, thank you.

MICHAEL SMITH: You're very welcome.

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SENATOR STUHR: Any questions? Thank you very much for coming. Are there other proponents? Are there those wishing to testify in opposition? Welcome.

HERB SCHIMEK: Madam Chair, my name is Herb Schimek, H-e-r-b S-c-h-i-m-e-k. I'm here representing the Nebraska State Education Association and generally in accord with most of the sections. The only section that we have a question on is the section that deals with the 101 percent. That came about through a negotiation with the School Board Association quite a number of years ago. Before that time, the rates fluctuated all over the place. Every year the actuarial value would come out and we'd have a fluctuation of the rates. And so we sat down with the School Boards Association and basically came out with the deal of the teacher would put in 101...100 percent, and the school board would put in 101 percent. And over that time that's allowed us to build up some surpluses and improve the plan. Now I know there's a question from some superintendents last year about, do we go out two points, or do we go out four places on figuring the figure? I think that might need to be cleared up. We have no problems at all with that, whether you go two or four. We would rather that you stay at 100, 101 percent, if at all possible. I think anyone with a 25-cent computer could probably figure out that rate. Do you have any questions?

SENATOR STUHR: Okay. Are there questions for Mr. Schimek? Well, Herb, actually in statute we have the 7.25.

HERB SCHIMEK: Um-hum.

SENATOR STUHR: And if we were ever going to change that, correspondingly we would probably change. But I also understand what you're saying,...

HERB SCHIMEK: Right.

SENATOR STUHR: '...that...where would we have the 101 percent.

HERB SCHIMEK: Right. We just didn't want to lose that ratio,...

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SENATOR STUHR: Um-hum, right.

HERB SCHIMEK: ...to put it bluntly. Someone could come in and change one or the other, and we'd be back to the problem we might have had in the past.

SENATOR STUHR: Okay, all right.

HERB SCHIMEK: But otherwise, we're in accord.

SENATOR STUHR: Okay, thank you. Are there other...yes, Senator Bourne.

SENATOR BOURNE: Mr. Schimek, before that was 101 percent, give me a sense of what the problems were? What was going on?

HERB SCHIMEK: Some years the employee rate would go up dramatically, like from 100 to 127 percent, and the employer rate might go down to 85 percent. You know, it was constantly juggling back and forth entirely at the whim of the committee at that time. And so, therefore, we made this deal, and it helped both sides to be able to plan into the future on what we're trying to do, and to develop a more stable retirement system. And so I think both sides have lived with it. And I must compliment the School Board Association: they've lived up to their side entirely.

SENATOR BOURNE: So it's just more of a budgeting...

HERB SCHIMEK: Yes, and I...

SENATOR BOURNE: ...for a...from a person's...

HERB SCHIMEK: ...understand superintendents panic and always want to know what that figure will be exactly, so they can set their budget. And I...if there's anything we can do to help them get that number, I have no problems at all.

SENATOR STUHR: Okay, thank you.

HERB SCHIMEK: Thank you.

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LB 1019, 1140

SENATOR STUHR: (Exhibit 3) Are there others wishing to testify in opposition? Are there those wishing to testify in a neutral capacity? If not, that closes the hearing on LB 1019, and we will open the hearing on LB 1140. Oh, I did have...I did have a letter that I did want to submit for LB 1019, and that is from a Mr. Roger Rea for the record. Okay. Open the hearing on LB 1140.

LB 1140

JASON HAYES: (Exhibits 4 and 5) Okay. Again, good afternoon, Senator Stuhr and members of the Nebraska Retirement Systems Committee. My name is Jason Hayes, spelled J-a-s-o-n H-a-y-e-s, counsel for the committee, and I'm here to introduce LB 1140 on behalf of the committee. This bill would make technical changes to the County Employees Retirement Act and the State Employees Retirement Act with regard to the granting of dividends under the cash balance benefit. The bill proposes explicit language for the granting of such dividend payments. Under Sections 23-2317 and 84-1319, the Public Employees Retirement Board has granted dividends in both 2004 and 2005 to county and state employee plan members participating in the cash balance benefit. In 2004, the dividend payout was \$6.8 million, and in 2005 it was \$6.845 million paid out to both state and county employees in the cash balance benefit. In Attorney General Opinion 6003, which you should have in front of you in the summary, issued January 9, 2006, the AG concluded that PERB has implicit authority to distribute excess earnings of cash balance benefit plan assets to participants' accounts as a form of benefit improvement. However, the Attorney General also indicated express and specific authority to declare and issue dividends set forth in the statutes would resolve any question of the board's authority and it is recommended that legislative clarification be undertaken for this purpose. LB 1140 provides this express and specific authority to permit PERB to distribute excess earnings of cash balance benefit plan assets to participants' accounts as dividends to members in the cash balance benefit. Such changes are technical because the provisions codify current implicit statutory authority held by PERB as determined by the Attorney

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General, and provide procedures for granting such dividends.
And are there questions?

SENATOR STUHR: Are there questions for Jason? If not,
thank you.

JASON HAYES: Okay.

SENATOR STUHR: Those wishing to testify in support of
LB 1140? Welcome.

JOE SCHAEFER: (Exhibit 6) Thank you. Good afternoon,
Senator Stuhr and members of the committee. My name is Joe
Schaefer, J-o-e S-c-h-a-e-f-e-r, legal counsel and
legislative liaison for Public Employees Retirement System
and I'm speaking in support of LB 1140. LB 1140 is intended
to clarify the authority of PERB to issue dividends in the
cash balance option of the state plan and the county plan.
As I'm sure you are aware, and Jason just mentioned, the
Attorney General has recently issued two opinions regarding
cash balance dividends. The cash balance investments, under
the care of the Investment Council, has performed in excess
of the crediting rate, and after the actuarial valuation was
received for the 2003 plan year, and again for the 2004 plan
year, the PERB issued a dividend to active plan members.
The Auditor of Public Accounts requested an opinion from the
Attorney General whether the issuance of such dividends was
in accordance with the statutes. Opinion 06003 answered
affirmatively. The Attorney General concluded that
Sections 23-2317 and 84-1319 served as implicit authority,
but went on to say that explicit authority from the
Legislature would alleviate any questions regarding the
board's authority. LB 1140 does provide or would provide
that authority. The PERB has previously adopted board
policy number 10, just now we lose our page (laugh)...

SENATOR STUHR: Sorry about that.

JOE SCHAEFER: ...to govern issuance of cash balance
dividends, and that policy is what is embodied, essentially,
in LB 1140. There is one change which I should note here.
When the dividends were issued, no dividend was paid to
former employees of the state or counties who still
maintained a cash balance account balance. I had cautioned

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the board on the constitutional provision in Article III, Section 19, the one that prohibits extra compensation, in the application of dividend payments. Attorney General Opinion 06004, again released earlier this month, requested by Senator Beutler, concludes that dividends can be paid to those who had terminated employment prior to the dividend payments. Thus the fourth bullet point in that Section E that I handed out, will be modified and is slated for amendment at the next board meeting. The board is also initiating the makeup of contribution to those persons who are not actively employed and did not receive a dividend previously. They will be caught up and the crediting rate of interest will be applied to that. Otherwise, the bill reflects the current practice of the board. It's important to mention that the 10 percent reserve threshold is maintained. That is no dividend can be paid which would increase the actuarial contribution rate above 90 percent of the actual contribution rate, essentially 10 percent of the actual contribution rate is held back in reserve. There are additional sections of the bill which harmonize, including sections which define the participants' account balances to include dividend amounts. And I believe that provisions for the state plan and the county plan are the same. With that, I'd try to answer questions that you might have.

SENATOR STUHR: Okay. Are there any questions for Mr. Schaefer? So actually we're just trying to put in statute what has been the practice now to make sure.

JOE SCHAEFER: The practice of the PERB, yes.

SENATOR STUHR: Okay. All right, thank you very much.

JOE SCHAEFER: Thank you.

SENATOR STUHR: Are there proponents for LB 1140? Welcome.

RICHARD LOMBARDI: Good afternoon, members of the committee, my name is Rich Lombardi. I'm appearing here as the registered lobbyist for the Nebraska Association of Public Employees. At the Saturday board meeting of the association, they wanted to make sure that I conveyed to this committee our deep appreciation for all the tireless work that you've had in upgrading the state employees

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system, particularly passage and advancement at least of LB 366. So, once again, I want to really thank the committee for making some pretty dramatic changes and dramatic improvements in the state employee system. We support LB 1140 and with comments from the PER board, I think we clarify an issue that we were concerned with. When we were all involved in the cash balance plan, I think one of the real attributes that we had was the cost of living benefit that was being provided through a cash balance. And I think with the changes made here and with what the PER board just represented, that that takes...that clarity is going to be arrived at. So we are very supportive of the changes in this bill and are appreciative of the clarification that the PER board is going to make with regard to dividends paid for people that are no longer employed but still have accounts within the state system. So thank you.

SENATOR STUHR: Okay, all right. Are there questions for Mr. Lombardi? If not, thank you very much. Are there others wishing to testify as proponents?

BETH BAZYN FERRELL: Good afternoon, Senator Stuhr, members of the committee. For the record, my name is Beth Bazyn Ferrell; B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm the assistant legal counsel for the Nebraska Association of County Officials. We are appearing here in support of the bill. Even though it's just a technical clarification, we do appreciate the work that the PER board has put into making this clarification, and we would support it.

SENATOR STUHR: Okay, thank you. Are there any questions for Beth? If not, thank you very much. Are there other proponents? Are there those wishing to testify in opposition? Are there those wishing to testify in a neutral capacity? If not, that closes the hearing on LB 1140, and we thank you all for coming.